**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH**

S.B. ARBITRATION APPLICATION NO.24/07

M/s. Anukampa Computers Pvt. Ltd.

**Versus**

U.O.I. & Ors.

**DATE OF ORDER :: 23/11/2007**

**HON'BLE MR. JUSTICE AJAY RASTOGI**

Mr. Ashok Mehta, for applicant

Mr. Sumit Khandelwal for Mr. Kunal Rawat, for respondents

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Instant application has been filed u/s.11 of Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

It is not disputed that parties have entered into agreement and Purchase Order arises from agreement was placed by the respondents to supply computers to the applicant vide communication dated 19th/20th December, 2002. Later on, dispute arose and there is a clause in the agreement to resolve such disputes. Clause 2900, which is relevant for present purposes, is reproduced as under:

> "2900. **Arbitration**
>
> (a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the

decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in case of contracts entered into by the Railway Board and by the Head of the Organization in respect of contracts entered into by the other organizations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract."

It is also not in dispute that for appointment of Arbitrator, applicant served a notice in the office of respondents, but they failed to make appointment of Arbitrator as provided in clause of agreement either within 30 days or thereafter. In reply to application, objection has been raised by counsel for respondents is that FIR No.RC/JAI/2003/0022 was

registered in which the present applicant is also accused which is pending trial in the CBI Court which failed them to make appointment of Arbitrator as per clause of agreement. In addition to it, counsel for respondents further submits that what has already been paid is more than required in regard to the material supplied and infact, they also have a claim against present applicant and in such circumstances, there is no arbitral dispute which requires to be arbitrated by Arbitrator under clause of agreement in question.

In **Datar Switchgears Ltd. Vs. Tata Finance Ltd. [(2000) 8 SCC-151]**, the apex court in Para 19 observed that if respondents were failed to make appointment of an Arbitrator in terms of clause of agreement till application filed within 30 days or till application is filed in this court, their right of appointing Arbitrator stands extinguished and Chief Justice or his designated Judge alone holds competence to appoint Arbitrator u/s.11(6) of the Act. Para 19 of judgment [supra], which is relevant for present purposes, is reproduced as under:

> “So far as cases falling under Section 11(6) are concerned -- such as the one before us -- no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed under Section 11(4) and Section 11(5) of

the Act. In our view, therefore, so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the Court under Section 11, that would be sufficient. In other words, in cases arising under Section 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application under Section 11 seeking appointment of an arbitrator. Only then the right of the opposite party ceases. We do not, therefore, agree with the observation in the above judgments that if the appointment is not made within 30 days of demand, the right to appoint an arbitrator under Section 11(6) is forfeited."

In view of judgment referred to supra, apparently the respondents have failed to act in

accordance with procedure laid down for appointment of Arbitrator in terms of clause of the agreement. As such, Arbitrator is required to be appointed u/s.11 of the Act, 1996.

Looking to the facts and circumstances of the case, since the matter is pending in CBI Court as well, its effect is also required to be looked into. In such circumstances, I consider it proper to appoint Hon'ble Mr. Justice N.L. Tibrewal [Retd.], Plot No.182, Scheme No.8, Gandhi Path, Queen's Road, Jaipur as sole Arbitrator to whom the dispute shall be referred. Remuneration of Rs.1,00,000/- & Rs.10,000/- towards expenses [to be equally shared] shall be paid to the sole Arbitrator by the parties.

With the above observations, the application stands disposed of. Copy of this order be sent to Hon'ble Mr. Justice N.L. Tibrewal [Retd.], Plot No.182, Scheme No.8, Gandhi Path, Queen's Road, Jaipur, Arbitrator forthwith and parties are directed to appear before him on 17th January, 2008 at 4.30 PM.

**[AJAY RASTOGI],J.**